

A G Contract No.: KR05-0154TRN  
ADOT ECS File No.: JPA 04-151  
Project No: CM-CHN-0(020)A  
Project: Intersection Improvements  
Section: Alma School Road-Warner Road  
TRACS No.: SS534 01C  
Budget Source Item No.: N/A

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF CHANDLER

THIS AGREEMENT is entered into 9th March, 2005, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF CHANDLER, ARIZONA, acting by and through its MAYOR and CITY COUNCIL (the "City")

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
4. A project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for their approval.
5. The City, in order to obtain federal funds for the construction of the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering and administration costs (CE). The City will administer the construction project as defined herein

NO. 27406  
Filed with the Secretary of State  
Date Filed: 03/09/05

Jenice K. Brewer  
Secretary of State

By: Dan D. Greenwald

6. The interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

7. The work embraced in this agreement is to be administered by the City, and the estimated costs are as follows: Alma School Road and Warner Road improvements.

**TRACS No.: SS534 01C**

<b>Total Estimated Cost of the Project</b>	<b>\$4,967,613.00*</b>
Federal Aid Funds @ 94.3% of \$3,572,640.00 (CMAQ)	\$3,369,000.00
City Funds @ 5.7 of \$3,572,640.00	\$ 178,632.00
Additional City Funds @ 100%	<u>\$1,419,981.00</u>
<b>Total Estimated City Funds</b>	<b>\$1,598,613.00</b>

\*(Includes 5% contingencies)

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

**II. SCOPE OF WORK**

1. The State shall:

a. Submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

b. Hereby agrees to be authorized agent for the City, and with the aid and consent of the City and the FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of the City and the FHWA, enter into a contract with a firm on behalf of the City to whom the award is made for the construction of the project. Such project to be performed, completed, accepted and paid for in accordance with the instructions and requirements of the City and the Standard Specifications for Road and Bridge Construction of the Arizona Department of Transportation.

c. Enter into a Project Agreement with FHWA on behalf of the City covering the work embraced in said construction contract and will request the maximum federal funds available, including construction engineering and administration costs. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

d. Be allowed to perform any inspections of the project or audit any books or records of the City in order for the State to assure itself that the monies on the project have been spent and the project completed in accordance with the plans and specifications, statutes, rules, and regulations of the State and federal government.

e. Not be obligated to maintain said project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City shall:

a. If such project is approved for construction by FHWA and the funds are available for construction, the City will and does hereby designate the State as authorized agent for the City.

b. Agree the cost of the analysis and work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed and determined by FHWA.

c. Deposit funds with the State, in the amount determined to be necessary to match federal funds in the ratio required, prior to the solicitation of bids

d. Be obligated to incur and will pay for any increased costs, should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this Agreement.

e. Acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bid.

f. Remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed therefrom, prior to the start of construction.

g. Not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

h. Upon completion of construction, provide for, at its own costs and as an annual item in its budget, proper maintenance, including, but not limited to, signs, and markings necessary for the purpose of regulating, warning and guiding traffic, all in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

i. Provide personnel to administer and supervise construction. The FHWA will participate in the cost of construction supervision provided by the City at the pro rata established in the Project Agreement for up to 15 percent (15%) of the cost of construction. Construction supervision costs not participated in by FHWA shall be borne by the City. All construction project change orders are to be copied to the State.

j. Complete the project in accordance with approved plans and specifications and the requirements of the relevant State and federal statutes, rules or regulations. In the event the City fails to comply with the plans, specifications or any relevant State or federal statutes, rules or regulations, the City shall hold the State harmless from any claims or costs incurred by the State as a result of the City's failure to comply.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The cost of the construction and construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

3. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project and related deposits or reimbursement, except any provisions for maintenance by the City shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty days written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said project.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. **Non-Availability of Funds.** Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S 17th Avenue Mail Drop 616E  
Phoenix, AZ 85007  
FAX: (602) 712 7424

City of Chandler  
City Manager  
55 North Arizona Place, # 301  
Chandler, AZ 85225-5540

11. Pursuant to Arizona Revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

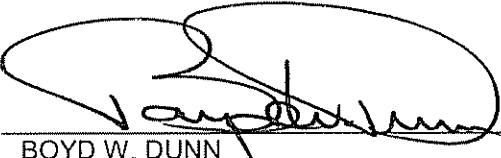
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IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF CHANDLER

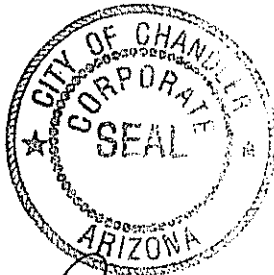
STATE OF ARIZONA


Department of Transportation

By   
BOYD W. DUNN  
Mayor

By   
SUSAN TELLEZ  
Contract Administrator

ATTEST



By   
MARLA PADDOCK  
City Clerk

RESOLUTION NO. 3819

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHANDLER, ARIZONA, AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT, JPA04-151, WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) IN THE AMOUNT OF \$4,967,613 FOR THE CONSTRUCTION OF ALMA SCHOOL ROAD AND WARNER ROAD INTERSECTION IMPROVEMENTS

WHEREAS, the City of Chandler desires to construct improvements to the Alma School Road and Warner Road intersection ("the project"); and,

WHEREAS, the project has been fully designed and approved by ADOT; and,

WHEREAS, the project is eligible for Congestion Mitigation and Air Quality funds; and,

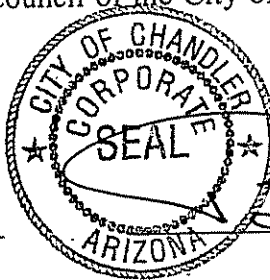
WHEREAS, the Arizona Department of Transportation has identified \$3,369,000 in Congestion Mitigation and Air Quality funds for the project, with the City providing a minimum of 5.7% matching funding plus all costs above the \$3,369,000 grant;


NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chandler, Arizona, that the Mayor be authorized to sign and execute said Intergovernmental Agreement on behalf of the City of Chandler.

PASSED AND ADOPTED by the City Council of the City of Chandler, Arizona, this 24<sup>th</sup> day of February 2005.

ATTEST:

  
CITY CLERK



  
MAYOR

CERTIFICATION

I HEREBY CERTIFY that the above and foregoing Resolution No. 3819 was duly passed and adopted by the City Council of the City of Chandler, Arizona, at a regular meeting held on the 24<sup>th</sup> day of February 2005 and that a quorum was present thereat.

  
CITY CLERK

APPROVED AS TO FORM:

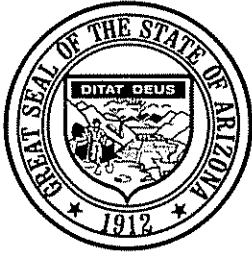
  
CITY ATTORNEY

APPROVAL OF THE CITY OF CHANDLER ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF CHANDLER, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 25<sup>th</sup> day of February, 2005.

Dennis M. O'Neill  
City Attorney



**ATTORNEY GENERAL  
CIVIL DIVISION  
TRANSPORTATION SECTION**

**MEMORANDUM**

Jeffrey T. Murray  
Assistant Attorney General

Direct: (602) 542-8859  
Fax: (602) 542-3646

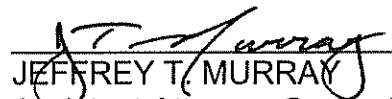
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR05-0154TRN (**JPA 04-151**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED March 4<sup>th</sup>, 2005.

TERRY GODDARD  
Attorney General

  
JEFFREY T. MURRAY  
Assistant Attorney General  
Transportation Section

JTM:dgr  
Attachment  
894052